

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERESA M. DURMA and DEPARTMENT OF AGRICULTURE,
FOOD & CONSUMER SERVICES, Robbinsville, NJ

*Docket No. 98-442; Submitted on the Record;
Issued December 28, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant established a recurrence of disability on April 4, 1996 casually related to her June 10, 1994 accepted employment injury; (2) whether appellant established a bilateral carpal tunnel or lumbar condition related to the accepted employment injury; (3) whether the Office of Workers' Compensation Programs properly denied appellant's request for a merit review in its July 17, 1997 decision; and (4) whether the Office properly denied appellant's request for a merit review in its October 27, 1997 decision.

On June 10, 1994 appellant, then a 45-year-old program specialist, filed a notice of traumatic injury, alleging that she injured her breastbone, suffered whiplash injuries, sustained bruises and experienced a headache as a result of being struck by a truck from behind while in a vehicle in the course of her federal employment.

On July 14, 1994 the Office accepted the claim for a cervical strain. Appellant subsequently received compensation for total temporary disability. She returned to work in a limited-duty position, working four hours per day on February 27, 1995 and her compensation was reduced accordingly.

On July 16, 1994 Dr. John R. Stabile, appellant's treating physician and a general practitioner, found that appellant suffered a lumbar strain in addition to her cervical injuries. Dr. Stabile generally related all of appellant's conditions to her accident on June 10, 1994.

On July 18 and 28, 1995 Dr. Ariel F. Abud, a Board-certified neurological surgeon, indicated that he treated appellant for lower back pain.

On April 5, 1996 Dr. Stabile stated that appellant complained of debilitating neck pain, headache, numbness in both hands and stiffness of the cervical spine during his examination on April 4, 1996. He indicated that a computerized axial tomography (CAT) scan showed an annular bulge at C5-6 as well as spondylosis and degenerative changes. Dr. Stabile noted a

moderate spinal stenosis and stated that cord impingement could not be excluded. He stated that magnetic resonance imaging (MRI) scan showed a protruding disc at C5-6 as well as spondylotic protrusion at C5-6 and C6-7. Dr. Stabile stated that it also showed narrowing of the cervical canal at C5-6 and moderate degenerative changes at C6-7.

On April 25, 1996 appellant filed a notice of recurrence of disability alleging that she suffered a recurrence on April 4, 1996. She stated that on April 4, 1996 she suddenly experienced severe neck pain which precluded her from further work.

On April 17, 1996 Dr. Stabile diagnosed protruding cervical discs at C5-6 and C6-7. He stated that appellant was impaired by severe cervical pain.

On May 6, 1996 the Office advised appellant of the evidence needed to establish her claim for a recurrence of disability. Specifically, the Office requested medical opinion supported by medical rationale addressing whether and how her present condition was causally related to the incident June 10, 1994.

On May 7, 1996 Dr. Abud stated that appellant complained of severe pain in the neck down to the left arm. He indicated that appellant was working when she suddenly experienced neck difficulty. Dr. Abud noted that an MRI scan on March 30, 1996 showed degenerative disc disease at the C5-6 level.

By decision dated June 13, 1996, the Office rejected appellant's claim for a recurrence of disability. In an accompanying memorandum, the Office indicated that the medical evidence failed to demonstrate that the claimed recurrence on or after April 4, 1996 was causally related to the injury.

Appellant subsequently submitted an April 23, 1996 report from Dr. Stabile in which he concluded that appellant remained unable to work. He noted that a CAT scan showed an annular bulge at C5-6 as well as spondylosis and degenerative changes. Dr. Stabile observed moderate spinal stenosis and stated that cord impingement could not be excluded. He stated that the MRI scan showed a protruding disc at C5-6 and spondylotic protrusion at C5-6 and C6-7. Dr. Stabile noted a narrowing of the cervical canal at C5-6 and moderate degenerative changes at C5-6 and C7.

Appellant also submitted a May 28, 1996 report from Dr. Stabile. He stated that on January 3, 1996 appellant experienced an increase in both neck pain and paresthesia of both upper extremities as well as paresthesia of the right leg. Dr. Stabile stated that appellant's constant pain and paresthesia were directly related to her motor vehicle accident.

On July 25, 1996 Dr. Abud stated that appellant still complained of pain in the neck down to the arms. He indicated that an electromyography (EMG) of the cervical spine showed cervical radiculopathy at C5-6 and C-7. Dr. Abud further indicated that an EMG of both hands showed evidence of bilateral carpal tunnel syndrome. His examination revealed discomfort on neck movements with pain on extension of the neck and decreased sensation to pin prick in the median distribution of both hands as well as paresthesia in the left arm. Dr. Abud also noted that appellant complained of paresthesia in the right leg.

On August 2, 1996 Dr. Stabile stated that appellant's symptoms of neck, arm and low back pain were related to her June 10, 1994 accident because she never experienced similar symptoms prior to that accident.

On August 15, 1996 Dr. Abud stated that as a result of her accident on June 10, 1994, appellant had a C5-6 herniated disc, which was treated surgically. He stated that cervical radiculopathy was demonstrated by an EMG and it was still present. Dr. Abud also stated that bilateral carpal tunnel syndrome was demonstrated on an EMG. He stated that continuing paresthesia resulted from the June 10, 1994 accident. Dr. Abud stated that appellant could have a recurrent herniated disc at C5-6, but that an MRI scan was required to make sure. He stated that appellant needed an EMG scan of both wrists to evaluate her carpal tunnel syndrome. Dr. Abud stated that appellant would never return to her regular work.

Pursuant to appellant's request, a hearing was held on November 19, 1996.

On November 20, 1996 Dr. John J. Manning, a Board-certified radiologist, interpreted an MRI scan of appellant's cervical spine. He diagnosed a C5-6 disc bulge, disc space narrowing, small circumferential osteophyte and hyperstotic changes of the uncovertebral joints. Dr. Manning indicated that there was a C5-6 suspicion for right posterolateral herniated nucleus pulposus causing a mild ventral impression on the cord. He noted that there was a small amount of enhancement posterior to the C5 vertebral body and C5-6 disc suggestive of scar tissue. Finally, Dr. Manning found C6-7 disc bulging, disc space narrowing and small osteophytes causing a mild central spinal canal stenosis and Type I bone marrow signal intensity changes.

On November 26, 1996 Dr. Abud stated that an MRI scan of the cervical spine showed evidence of a C5-6 recurrent disc herniation. He also stated that an EMG and a nerve conduction study showed evidence of bilateral carpal tunnel syndrome. Dr. Abud noted that appellant complained of paresthesia of the hands. He noted that appellant complained of pain with neck movements and low back pain since her accident. Dr. Abud found that appellant's range of motion of her neck was limited by 80 percent due to discomfort. He also found pain on extension of the back and pain on straight leg raising bilaterally at 90 degrees.

On December 18, 1996 Dr. Stabile stated that appellant suffered from post-traumatic pain syndrome following her accident on June 10, 1994, which included severe neck and shoulder pain related to a herniated cervical disc as well as low back pain.

By decision dated January 28, 1997, the Office hearing representative found that appellant failed to establish that she sustained a low back condition or a bilateral wrist condition as a result of her June 10, 1994 work injury. In this regard, the hearing representative noted that although appellant noted low back pain to Dr. Stabile during his examination on June 14, 1994, she did not receive further treatment for this condition until July 18, 1995. The Office hearing representative further noted that appellant did not report a history of any wrist condition until April 4, 1996 and no diagnosis regarding such a condition was made until July 25, 1996. The Office hearing representative also found that appellant failed to establish a recurrence of disability beginning April 4, 1996 because neither Dr. Abud nor Dr. Stabile discussed whether appellant's underlying degenerative disc disease and spinal narrowing at C6-7 affected her

disability and because both physicians conclude that the disability is related to the accepted injury because appellant was asymptomatic prior to the employment injury.

On March 25, 1997 Dr. Abud stated that appellant complained of neck pain and pain in the shoulder areas. He also noted complaints of paresthesia of the hands and pain in the right lower extremity. Dr. Abud stated that all of appellant's problems resulted from her motor vehicle accident. He noted that an MRI scan of the cervical spine demonstrated a C5-6 recurrent disc herniation. Dr. Abud diagnosed bilateral carpal tunnel syndrome and problems with her right knee. He stated that appellant needed a repeat discectomy with a fusion and surgery for carpal tunnel.

On April 2, 1997 Dr. Stabile indicated that he treated appellant for left cervical pain shooting to the left occipital area on moving her head in various directions. He also noted that appellant complained of pain radiating to her left arm as well as pain in her right thigh. Dr. Stabile indicated that appellant had severe cervical and lumbar symptoms since her accident on June 10, 1994. He stated that his physical examination showed a decreased range of motion of the cervical spine and left para cervical muscle spasm. Dr. Stabile stated that appellant still suffered from status post discectomy for a herniated cervical disc and left cervical radiculopathy which has a direct causal relationship to her symptoms of muscle spasm and radiculopathy. He concluded that appellant was totally disabled from injuries from her motor vehicle accident.

On April 10, 1997 Dr. Abud stated that an MRI scan of appellant's knee showed a small joint effusion plus osteoarthritic changes. He noted complaints of pain in the back down to the lower extremity, pain in the neck down to the upper extremities and discomfort on neck movements with limitation to about 75 percent of normal. Dr. Abud also noted pain and limitation of back movements to about 80 percent of normal with pain on bilateral straight leg raises. The MRI scan Dr. Abud relied on was interpreted by Dr. Manning on March 27, 1997.

On April 16, 1997 appellant requested reconsideration.

On April 26, 1997 Dr. Stabile again indicated that appellant remained totally disabled. He stated that appellant was status post cervical discectomy with cervical radiculopathy. Dr. Stabile also diagnosed bilateral carpal tunnel syndrome.

On April 29, 1997 Dr. Abud again indicated that all of appellant's problems resulted from her motor vehicle accident on June 10, 1994.

On July 2, 1997 Dr. Stabile diagnosed a herniated cervical disc, cervical radiculopathy and post-traumatic syndrome. He checked "yes" to indicate that appellant was totally disabled for her usual work and that the present condition was due to the injury for which compensation was claimed.

By decision dated July 17, 1997, the Office denied reconsideration inasmuch as evidence submitted in support of the request was duplicative in nature. In this regard, the Office noted that the March 26, April 2 and July 2, 1997 reports of Dr. Stabile failed to refer to the April 4, 1996 recurrence of disability. The Office further noted that Dr. Stabile discussed conditions

such as left cervical pain, pain radiating to the left arm, pain in the thigh and cervical and lumbar symptoms, which were not accepted as related to the June 10, 1994 injury. The Office further noted that Dr. Abud failed to discuss appellant's underlying degenerative disc disease and spinal narrowing in his reports dated March 25 and April 10, 1997.

Appellant subsequently submitted July 16 and 21 and August 13, 1997 reports from Dr. Stabile. He diagnosed a herniated cervical disc, cervical radiculopathy and post traumatic syndrome. Dr. Stabile checked "yes" to indicate that appellant was totally disabled from her usual work and that the present condition was due to the injury for which compensation was claimed.

On August 6, 1997 appellant requested reconsideration.

Appellant then resubmitted Dr. Abud's March 25, April 10 and 29, 1997 reports and Dr. Manning's March 27, 1997 MRI scan.

By decision dated October 27, 1997, the Office denied the application for reconsideration because the evidence submitted in its support was insufficient to warrant review. The Office stated that the reports submitted on reconsideration were cumulative of the evidence already in the record.

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on or after April 4, 1996 causally related to an employment injury or any other factor of employment.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.¹ In the instant case, appellant has failed to establish either a change in the nature or extent of her light-duty requirements or a change in her accepted injury-related condition.

The record indicates that appellant returned to limited duty on February 27, 1995. On April 25, 1996 appellant filed a claim alleging total disability from April 4, 1996. She attributed her claimed disability to her June 10, 1994 employment-related injury.

There is no evidence of record establishing any change in the nature or extent of appellant's permanent light-duty position, which began on February 27, 1995, as a cause of appellant's claimed disability on April 4, 1996.

¹ See *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 859, 864 (1989); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

The medical evidence is also insufficient to establish that appellant was disabled from her light-duty position due to a change in the nature or extent of her accepted injuries.

In support of her claim for a recurrence of disability, appellant failed to submit a rationalized medical opinion addressing whether and how her present condition related to her June 10, 1994 injury as is required to meet her burden of proof.² In his May 28, 1998 report, Dr. Stabile, appellant's treating physician and a general practitioner, indicated that appellant's constant pain and paresthesia directly related to her accident. He, however, failed to explain his conclusion and, therefore, his opinion is entitled to little weight.³ On August 2, 1996 Dr. Stabile concluded that appellant's symptoms of pain were related to her June 10, 1994 accident because she never experienced such pain prior to the accident. Nevertheless, a medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before an injury, but symptomatic after it is insufficient, without supporting rationale to establish causal relation.⁴ Consequently, Dr. Stabile's reports failed to establish that appellant's present condition was causally related to her June 10, 1994 injury.⁵

Appellant also submitted several reports from Dr. Abud, a Board-certified orthopedic surgeon. In his reports dated May 7, July 25, August 15 and November 26, 1996, Dr. Abud described appellant's symptoms and diagnosed degenerative disc disease at C5-6, paresthesia, cervical radiculopathy, bilateral carpal tunnel syndrome and evidence of a C5-6 recurrent disc herniation. He, however, failed to explain how any of appellant's present conditions related to her accepted injury. Dr. Abud's reports, therefore, are insufficient to meet appellant's burden of proof.⁶

Finally, appellant submitted an MRI scan report from Dr. John J. Manning, a Board-certified radiologist, diagnosing a C5-6 disc bulge, disc space narrowing, small circumferential osteophyte and hyperstotic changes of the uncovertebral joints. He also diagnosed a suspicion of C5-6 right posterolateral herniated nucleus pulposus causing a mild ventral impression on the cord.

Dr. Manning also diagnosed C6-7 disc bulging, disc space narrowing and small osteophytes causing a mild central spinal canal stenosis and Type 1 bone marrow signal intensity changes. Inasmuch as Dr. Manning failed to relate any of his diagnosed conditions to appellant's accepted injury, his opinion is insufficient to establish a recurrence of disability.⁷ Accordingly, appellant failed to meet her burden of proof in establishing that she sustained a recurrence of disability causally related to her accepted employment injuries or any other factors of her employment.

² *Richard E. Konnen*, 47 ECAB 388 (1996).

³ *Leon Harris Ford*, 31 ECAB 514, 518 (1980).

⁴ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

⁵ Appellant also submitted reports from Dr. Stabile dated April 5, 17 and 23 and December 18, 1996. These reports failed to address the relationship between appellant's present condition and her accepted injury.

⁶ *See Leon Harris Ford*, *supra* note 3.

⁷ *See Richard E. Konnen*, *supra* note 2.

The Board further finds that appellant failed to establish that she sustained bilateral carpal tunnel syndrome or a lumbar strain as a result of her accepted employment injury.

Dr. Abud diagnosed bilateral carpal tunnel syndrome in his reports dated July 25, August 15 and November 26, 1996 and Dr. Stabile diagnosed a lumbar strain in his report dated July 16, 1994. Nevertheless, neither physician provided a medical explanation regarding how these diagnosed conditions were causally related to the employment-related accident on June 10, 1994. Accordingly, appellant failed to meet her burden of establishing that she sustained either bilateral carpal tunnel syndrome or a lumbar strain as a result of her June 10, 1994 accident.⁸

The Board also finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for a merit review on July 17, 1997.

Under section 8128(a) of the Federal Employees' Compensation Act,⁹ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.138(b)(1) of the implementing federal regulations,¹⁰ which provides that a claimant may obtain review of the merits of the claim by:

“(i) Showing that the Office erroneously applied or interpreted a point of law; or

“(ii) Advancing a point of law or a fact not previously considered by the Office;
or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.¹¹

In support of her request for reconsideration, appellant submitted reports from Dr. Abud dated March 25, April 10 and April 29, 1997. In these reports, Dr. Abud again noted appellant's back complaints and repeated his earlier diagnoses of recurrent disc herniation and bilateral carpal tunnel syndrome. In his April 29, 1997 report, Dr. Abud again indicated without any elaboration, that all of appellant's problems related to her June 10, 1994 accident. The reports from Dr. Abud merely repeat the unexplained findings and conclusions he presented in his previously submitted reports dated July 25, August 15 and November 26, 1996. Consequently, Dr. Abud's reports are cumulative and are, therefore, insufficient to reopen appellant's claim for a review of the merits.

⁸ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ 5 U.S.C § 8128(a).

¹⁰ 20 C.F.R. § 10.138(b)(1).

¹¹ 20 C.F.R. § 10.138(b)(2).

Appellant also submitted reports from Dr. Stabile dated April 2, April 26 and July 2, 1997. In these reports, Dr. Stabile restated that appellant remains disabled due to her cervical condition and, in his April 26, 1997 report, he again diagnosed bilateral carpal tunnel syndrome. Because these reports merely repeat the previous conclusions of Dr. Stabile, these reports are also cumulative and are also insufficient to reopen appellant's claim for a merit review. Accordingly, the Office did not abuse its discretion in refusing to reopen appellant's claim for a merit review in its July 17, 1997 decision.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for a merit review on October 27, 1997.

In support of her August 6, 1997 request for reconsideration, appellant submitted reports from Dr. Stabile dated July 16, July 21 and August 13, 1997. In these reports, Dr. Stabile again restated his prior conclusion that appellant remained totally disabled from her cervical condition. Inasmuch as Dr. Stabile merely restated his prior conclusions, which were given in numerous opinions already of record, this evidence is cumulative and is not sufficient to reopen appellant's claim for a merit review. Appellant also resubmitted Dr. Abud's March 25, April 10 and April 29, 1997 reports and, Dr. Manning's March 27, 1997 MRI scan. Because this evidence was previously considered, it is not sufficient to reopen appellant's claim for a merit review. Accordingly, the Office did not abuse its discretion in refusing to reopen appellant's claim for a merit review in its October 27, 1997 decision.

The decisions of the Office of Workers' Compensation Programs dated October 27, July 17 and January 28, 1997 are affirmed.

Dated, Washington, D.C.
December 28, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member